PETITION

PURSUANT TO SECTION 126 OF THE CLEAN AIR ACT, 42 U.S.C. § 7426

To the United States Environmental Protection Agency for Relief From Unlawful Emissions from the Portland Generating Station in Upper Mount Bethel Township, Northampton County, Pennsylvania.

Submitted by the State of New Jersey

BOB MARTIN
Department of Environmental Protection Commissioner

Petition Pursuant to Section 126 of the Clean Air Act to the United States Environmental Protection Agency for Abatement of Emissions From the Portland Generating Station in Upper Mount Bethel Township, Northampton County, Pennsylvania That Significantly Contribute to Nonattainment And/Or Interfere with Maintenance of National Ambient Air Quality Standards in New Jersey.

I. INTRODUCTION AND SUMMARY OF CONCLUSIONS

The State of New Jersey, through New Jersey Department of Environmental Protection (NJDEP) Commissioner Bob Martin, hereby petitions the United States Environmental Protection Agency (EPA) pursuant to Section 126(b) of the Clean Air Act (CAA or Act"), 42 U.S.C. § 7426(b), to abate the unlawful transport of emissions from the coal-fired Portland Generating Station ("Portland Plant" or "Portland") to New Jersey.

Portland is located on the Delaware River in Upper Mount Bethel Township, Northampton County, Pennsylvania, upwind of and within 500 feet of Warren County, New Jersey. *See* attached photo, Exh. 1. Emissions from Portland's 400 foot smokestacks reach New Jersey's 400 foot elevated terrain that is directly across the Delaware River border.

The emissions from Portland significantly contribute to nonattainment and/or interfere with maintenance of National Ambient Air Quality Standards ("NAAQS") in New Jersey in violation of Section 126(b) of the Act, 42 U.S.C. § 7426(b). NJDEP's modeling demonstrates that Portland's emissions are causing violations of the 24-hour and 3-hour sulfur dioxide ("SO_2") and 24-hour fine particulate matter ("$PM_{2.5}$") NAAQS in Knowlton Township, Warren County, New Jersey, which is located directly across the river from Portland. Because Portland's emissions cause NAAQS violations, this Pennsylvania source significantly contributes to New Jersey's nonattainment. Portland's emissions also interfere with New Jersey's maintenance of the SO_2 and 24-hour $PM_{2.5}$ NAAQS, for which Knowlton Township, Warren County is currently designated attainment.[1]

New Jersey's modeling shows that Portland's emissions have an adverse impact on New Jersey's air quality, New Jersey's ability to maintain and attain the NAAQS, and on public health and welfare. Therefore, New Jersey seeks direct EPA regulation of the Portland Plant and abatement within, at a minimum, three years as mandated by Section 126, 42 U.S.C. § 7426. New Jersey proposes air pollution controls and lower emission rates for the Portland Plant to remedy the violations. *See* VII.

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[1] Due to the modeling results, this area in Warren County could be redesignated to nonattainment with respect to the SO_2 and 24-hour $PM_{2.5}$ NAAQS. EPA initially rejected New Jersey's recommendation to designate Knowlton Township nonattainment for the 24-hour $PM_{2.5}$ NAAQS but recently advised it is assessing whether to reconsider this decision. *See* Section IIIB2, below.

II. PORTLAND'S EMISSIONS

Portland's Units 1 and 2 were built in the 1950's and 1960's. The units have no air pollution controls to limit their SO_2 emissions and outdated air pollution controls for particulate matter (electrostatic precipitators, approved for construction in 1985 and 1987). Portland's SO_2 emissions are extremely high. A July 2007 report by the Environmental Integrity Project, "Dirty Kilowatts America's Most Polluting Power Plants," ranks Portland as number five in terms of highest 2006 SO_2 emission rate per megawatt generated in the country,[2] and Portland's emissions have trended upwards over recent years. Based on EPA's Clean Air Market Emissions Database, the Portland Plant emitted 31,001 tons of SO_2 in 2008 and 30,345 tons of SO_2 in 2009, *see* http://camddataandmaps.epa.gov/gdm/, which is more than all of New Jersey's power generation facilities combined for 2009 (EPA's Clean Air Markets Emissions Database shows that for 2009, New Jersey facilities emitted 12,810 tons of SO_2.) *See* Excerpts from EPA's Clean Air Markets Emissions Database and Graph. (Exhs. 2, 3 and 4).

III. THE CLEAN AIR ACT REQUIRES EPA TO PROMULGATE NAAQS TO PROTECT THE PUBLIC HEALTH AND WELFARE FROM THE ADVERSE EFFECTS OF AIR POLLUTION

A. Harmful Effects of SO_2 and $PM_{2.5}$

1. Sulfur Dioxide (SO_2)

Health effects of SO_2 include coughing, wheezing, shortness of breath, nasal congestion and inflammation, inflammation of asthma, low birth weight, and increased percentage of infant death.[3] EPA found that as SO_2 concentrations increase, so do respiratory symptoms such as asthma.[4] Further, SO_2 emissions contribute to the formation of acid deposition, which has caused lakes and ponds in New Jersey to become acidic. *See, e.g.*, http://www.epa.gov/air/urbanair/so2/chf1.html. SO_2 and oxides of nitrogen ("NO_x") interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. *Id*

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[2] *See* Environmental Integrity Project, *Dirty Kilowatts America's Most Polluting Power Plants* (July 2007), *available at* http://environmentalintegrity.org/pdf/publications/Dirty_Kilowatts_2007.pdf.

[3] *See* Clean Air Task Force, *Dirty Air, Dirty Power Mortality and Health Damage Due to Air Pollution from Power Plants*, at 10 (June 2004) ("*Dirty Air*"), *available at* http://www.catf.us/publications/reports/Dirty_Air_Dirty_Power.pdf.

[4] *See* "*Risk and Exposure Assessment to Support the Review of SO_2 Primary National Ambient Air Quality Standards: Final Report*," at 32 (July 2009) ("*Risk and Exposure*"), *available at* http://www.epa.gov/ttn/naaqs/standards/so2/s_so2_cr_rea.html.

SO_2, a major precursor to $PM_{2.5}$, has been linked to respiratory illness and aggravates existing heart and lung disease. *See* http://www.epa.gov/air/urbanair/so2/chf1.html. Children with asthma are especially at risk. *Id.* SO_2 also interacts in the atmosphere to form sulfate aerosols, which may be transported long distances through the air. *See* http://www.epa.gov/air/urbanair/so2/hlth1.html. In the eastern United States, sulfates are the dominant fine particle species and come mostly from coal-fired power plants. *Dirty Air*, at 12. According to EPA, fossil fuel combustion at electric utilities contributes the majority of man-made SO_2 emissions (approximately 66%). *Risk and Exposure,* at 13, 86. In its 2010 status and trends Report on air pollution, EPA also documented these same health and environmental effects of SO_2 and reported that "sulfate particles contribute to the cooling of the atmosphere."[5] EPA also reported that electric utilities contribute about 70% of the nation's SO_2. *Id.* at 6.

2. Fine Particulate Matter ($PM_{2.5}$)

EPA has linked $PM_{2.5}$ to a variety of adverse health effects including premature mortality and chronic respiratory disease. *Clean Air Fine Particle Implementation Rule*, 72 Fed. Reg. 20,586 (Apr. 25, 2007). "Individuals particularly sensitive to $PM_{[2.5]}$ exposure include older adults, people with heart and lung disease, and children." *Id.*

In general, fine particles are either emitted directly from sources or are formed in the atmosphere from power plants' SO_2 and NO_x emissions.[6] $PM_{2.5}$ pollution causes tens of thousands of premature deaths each year in the United States, increased hospitalizations, emergency room visits, and decreased lung function in children.[7] *See also Our Nation's Air* at 4. Coal-fired power plants are one of the largest contributors to particle and ozone pollution. *See State of the Air 2009* at 8.

B. SO_2 and $PM_{2.5}$ NAAQS

The Act requires EPA to promulgate NAAQS to protect the public health and welfare from the adverse effects of air pollutants. CAA § 109, 42 U.S.C. § 7409. EPA then designates areas of the nation as attainment, non-attainment, or unclassifiable with respect to the NAAQS. *Id.* at CAA § 107, § 7407(c), (d). For areas determined to be in nonattainment, the states must submit to EPA for approval State Implementation Plans ("SIPs") for implementing, maintaining, and enforcing the NAAQS. CAA § 110, 42 U.S.C. § 7410. EPA may require a state to revise its SIP if it determines that the SIP is inadequate to ensure attainment maintenance of the NAAQS or public health. CAA § 110(k)(5); 42 U.S.C. § 7410(k)(5) (the so-called "SIP Call" provision).

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[5] *See* EPA, *"Our Nation's Air Status and Trends Through 2008"* at 4 (February 2010) (*"Our Nation's Air"*), *available at* http://www.epa.gov/airtrends/2010/report/fullreport.pdf.

[6] *See* Clean Air Task Force, *Dirty Air, Dirty Power Mortality and Health Damage Due to Air Pollution from Power Plants*, at 9 (June 2004) (*"Dirty Air"*), *available at* http://www.catf.us/publications/reports/Dirty_Air_Dirty_Power.pdf.

[7] *See* American Lung Association, *State of the Air 2009*, at 13-14, *available at* http://www.lungusa2.org/sota/2009/SOTA-2009-Full-Print.pdf.

States must also revise their SIPs to meet the requirements of Section 110 within three years of a new or revised NAAQS. CAA § 110(a)(1), 42 U.S.C. § 7410(a)(1).

1. Sulfur Dioxide (SO_2)

In 1971, EPA promulgated the current primary annual SO_2 NAAQS of 0.03 ppm (80 micrograms per cubic meter ("ug/m^3")), primary 24-hour SO_2 NAAQS of 365 ug/m^3 (140 ppb) and secondary 3-hour SO_2 NAAQS of 1300 ug/m^3 (500 ppb). 36 Fed. Reg. 8186 (April 28, 1971); 40 C.F.R. §§ 50.4, 50.5. *See also Risk and Exposure*, at 5-6. EPA recently proposed to replace the existing annual and 24-hour NAAQS with a new 1-hour SO_2 standard set between 50-100 ppb (131-263 ug/m^3). *See* 74 Fed. Reg. 64,810 (December 8, 2009). In New Jersey, parts of Warren County other than Knowlton Township are currently designated nonattainment for the existing SO_2 NAAQS. 40 C.F.R. § 81.331.

2. Fine Particulate Matter ($PM_{2.5}$)

Increasing concerns about the hazards of short-term exposure to $PM_{2.5}$, such as aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency department visits, and absences from work and school), prompted EPA to revise the 24-hour $PM_{2.5}$ NAAQS in 2006. *National Ambient Air Quality Standards for Particulate Matter; Final Rule*, 71 Fed. Reg. 61,144 (October 17, 2006). Specifically, EPA tightened the 24-hour $PM_{2.5}$ standard, revising it to 35 ug/m^3. *Id. See also* 40 C.F.R. § 50.7. The revised NAAQS reduce by almost 50 percent the acceptable average concentration of $PM_{2.5}$ in ambient air over a 24-hour period. *Id; see* 72 Fed. Reg. 20,586.

EPA recently designated certain parts of New Jersey as nonattainment for the revised 24-hour $PM_{2.5}$ standard. Although EPA rejected New Jersey's recommendation to designate Knowlton Township as nonattainment of the revised $PM_{2.5}$ standard,[8] EPA stated in its August 14, 2008 preliminary decision (adopted by EPA in its final decision) that "an air quality monitor located in the area of impact [Knowlton Township] as determined by air quality modeling could show a violation of the 24 hour $PM_{2.5}$ standard." NJDEP based its nonattainment recommendation on modeling of Portland's emissions. The modeling utilized monitoring data of background concentrations from the relevant time period.

[8] EPA asserted that there was no air quality monitoring data in the modeled nonattainment area to support New Jersey's recommendation. 74 Fed. Reg. 58,688 (November 13, 2009). On January 14, 2010, NJDEP requested that EPA reconsider its decision and on February 24, 2010, Assistant Administrator Gina McCarthy indicated that EPA needed additional time to assess this request. EPA designated Northampton County nonattainment for the revised 24-hour average $PM_{2.5}$ NAAQS. 74 Fed. Reg. at 58,758.

IV. THE CLEAN AIR ACT ASSURES TIMELY ABATEMENT OF UPWIND EMISSIONS THAT CONTRIBUTE SIGNIFICANTLY TO NEW JERSEY'S EXCEEDANCES AND/OR INTERFERE WITH ITS MAINTENANCE OF NATIONAL AMBIENT AIR QUALITY STANDARDS

A. Section 126 Requires EPA to Abate Sources' Unlawful Contributions to Interstate Pollution

Pursuant to Section 126(b), 42 U.S.C. § 7426(b), a state may petition the Administrator for a finding that a major source or group of stationary sources *emits or would emit* any air pollutant in violation of the prohibition in §110(a)(2)(D)(i)(I) or "this section."[9] Clean Air Act § 126(b), 42 U.S.C. § 7426(b). Based on this language, a source's actual or allowable emissions can result in a violation of this Section of the Act. Clean Air Act § 110(a)(2)(D)(i)(I) sets forth interstate transport provisions

> (i) prohibiting ...*any source or other type of emissions* within the state from emitting any air pollutant in amounts which will–
>
> (I) *contribute significantly* to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard . . . , [and]
>
> (ii) insuring compliance with the applicable requirements of sections 126 and 115 of this title (relating to interstate and international pollution abatement). [CAA § 110(a)(2)(D), 42 U.S.C. § 7410(a)(2)(D) (emphasis added).]

Accordingly, unlawful contribution to either a primary or secondary National Ambient Air Quality Standard is a violation of Section 126. The Administrator must make the requested finding or deny the petition within 60 days after receipt of the petition, and after a public hearing. CAA § 126(b), 42 U.S.C. § 7426(b).

The Act does not define "significant contribution" or "interfere with maintenance" as used in Sections 110 and 126, 42 U.S.C. §§ 7410, 7426. The D.C. Circuit, however, has emphasized that a source's or State's significant contribution to downwind nonattainment must be identified by some "measurable contribution." *See Michigan v. EPA*, 213 F.3d 663, 684 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 904 (2001).[10] Any significant *contribution* to nonattainment or

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[9] Section 126(b) contains a circular reference determined to be a "scrivener's error." The text should refer to § 110(a)(2)(D)(i), not § 110(a)(2)(D)(ii). *See Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1041-44 (D.C. Cir. 2001).

[10] In the NOx SIP Call, the Section 126 Rules, and in CAIR, EPA has also identified various air quality factors to define the term "significant contribution," which the D.C. Circuit has consistently upheld: (1) the overall nature of the ozone problem (i.e., "collective contribution); (2) the extent of the downwind nonattainment problems to which the upwind State's emissions are linked; (3) and the ambient impact of upwind emissions on downwind

interference with maintenance of the NAAQS is, necessarily, less than emissions that cause an actual exceedance or violation of the standard. *See, e.g.*, the Clean Air Interstate Rule ("CAIR"), *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to NO_x SIP Call,* 70 Fed. Reg. 25,162, 25,191 (May 12, 2005) ("the threshold for evaluating the air quality component of determining whether an individual State's emissions 'contribute significantly' to downwind nonattainment of the annual $PM_{2.5}$ standard, under section 110(a)(2)(D), *should be very small* compared to the NAAQS") (emphasis added). Once EPA makes a finding under Section 126(b), Section 126(c) provides that the violating source shall not operate three months after a finding regardless of whether the source has been operating under a duly issued state operating permit. CAA § 126(c), 42 U.S.C. § 7426(c).

The Administrator may allow the source to operate beyond such time only if the source complies with emission limitations and compliance schedules (containing increments of progress) as the Administrator may direct to bring about compliance.[11] *Id.* Such compliance must be brought about as expeditiously as practicable, and in no case later than three years after the date of the Administrator's finding. These timeframes are non-discretionary. *See, e.g.*, *Sierra Club v. Thomas*, 870 F.2d 783, 791 (D.C. Cir. 1987).

B. The Clean Air Act's Section 110 "Good Neighbor" Provision Requires States to Abate Interstate Pollution

The "prohibition" to which Section 126 refers is the same prohibition set forth in Section 110(a)(2)(D)(i)(I) against emissions of pollutants that cross state lines and impact another state's NAAQS attainment. 249 F.3d at 1045; *Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport*, 64 Fed. Reg. 28,250, 28,272 (May 25, 1999) ("1999 Section 126 Rule"). Sources in a state that contribute significantly to exceedances or interfere with the maintenance of NAAQS in violation of Section 110(a)(2)(D)(i)(I), therefore, also violate Section 126. Notably, Congress tightened regulation of interstate pollution in its 1990 Amendments to the Act, prior to which the "good neighbor" provision prohibited only those emissions which would "*prevent* attainment or maintenance by

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nonattainment problems. *See Michigan*, 213 F.2d at 677-79; *Appalachian* Power, 249 F.3d at 1047-49.

[11] The term "emission limitation" means a requirement established by the state or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation of maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under the CAA. CAA § 302(k), 42 U.S.C. § 7602(k). The term "compliance schedule" means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard. CAA § 302(p), 42 U.S.C. § 7602(p).

any other State of any [NAAQS]." *New York v. EPA*, 852 F.2d 574, 576 (D.C. Cir. 1988) (emphasis added). Under Section 110, EPA determines the required level of air quality, but defers in the first instance to the states on how to achieve that level. *Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1046 (D.C. Cir. 2001). Section 126, in contrast, contemplates direct EPA regulation of sources within a state. *Id.*

V. NEW JERSEY'S EVIDENCE OF SECTION 126 VIOLATIONS SHOWS THAT PORTLAND'S EMISSIONS SIGNIFICANTLY CONTRIBUTE TO NONATTAINMENT AND/OR INTERFERE WITH MAINTENANCE OF NAAQS IN NEW JERSEY

A. Emissions That Result in Exceedances of NAAQS Significantly Contribute to Nonattainment and/or Interfere with Maintenance of NAAQS in New Jersey

New Jersey's air quality evidence shows a measurable contribution from Portland's emissions to nonattainment in New Jersey, requiring EPA's finding of a Section 126 violation. *See Michigan v. EPA*, 213 F.3d at 684. The emissions from the Portland Plant, *i.e.*, a single source, violate the significant contribution and interfere with maintenance prohibitions of Section 126, 42 U.S.C. § 7426(b). At a minimum, the modeling results show a "measurable contribution" by the Portland Plant to New Jersey's ability to attain and maintain the NAAQS.

To determine the impact from the Portland Plant, NJDEP conducted a comprehensive modeling analysis using three different years of meteorological data. Local measurements and processed regional meteorological data from the NCAR/Pennsylvania State University Mesoscale Model version 5 (MM5) were both used to generate the three years of meteorological data. A summary of the CALPUFF modeling is contained in Exh. 5, "Summary of the Air Quality Modeling Conducted to Assess the Impact of Emissions from the Portland Generating Station in New Jersey" (March 15, 2010).

1. Sulfur Dioxide (SO_2)

When modeling the allowable SO_2 emissions from Portland, the results show violations of the health-based 24-hour SO_2 NAAQS in New Jersey. *See* Table 1 (Exh. 6). Without the inclusion of background the NAAQS violations are predicted to occur during each of the three years modeled. Up to 18 days during the year violate the NAAQS with the magnitude of these violations up to twice the 24-hour NAAQS.

Violations of the welfare-based 3-hour SO_2 NAAQS are also consistently demonstrated when modeling the allowable SO_2 emissions without inclusion of background. *See* Table 2 (Exh. 6). As with the 24-hour standard, NAAQS violations are predicted to occur during each of the three years modeled. Up to 38 days during the year violate the NAAQS with the magnitude of these violations up to 43 percent over the 3-hour NAAQS.

NJDEP also modeled the actual SO_2 emissions that occurred at Portland in 2002 using the 2002 meteorological data. Violations of the 3-hour NAAQS were predicted on two days during the year.

2. Fine Particulate ($PM_{2.5}$)

The CALPUFF model using 2002 meteorological data and the Portland Plant's estimated maximum emission rate, added to existing 2002 background $PM_{2.5}$ concentrations, predicted violations of the 24-hour $PM_{2.5}$ NAAQS in Knowlton Township, Warren County, New Jersey. NJDEP's CALPUFF analysis indicted seven days of new violations of the 35 ug/m^3 $PM_{2.5}$ NAAQS, with a single receptor violating two times.

The following exhibits set forth in detail NJDEP's SO_2 and $PM_{2.5}$ CALPUFF modeling analyses and results:

- "CALPUFF Modeling Analysis of the Sulfur Dioxide and $PM_{2.5}$ Impacts due to Emissions from the Portland Generating Station" (July 14, 2009). (Exh. 7);
- "CALPUFF Modeling Analysis of the Sulfur Dioxide Impact of 2002 Actual Sulfur Dioxide Emissions from the Portland Generating Station" (February 24, 2009). (Exh. 8) ;
- Bowman, J. Thomas, "Air Quality Modeling for the New Jersey Department of Environmental Protection" (January 2009) (Exh. 9) ; and
- "CALPUFF 1992-93 Modeling Analysis of the Sulfur Dioxide Impacts due to Emissions from the Portland Generating Station" (February 25, 2010) (Exh. 10);

B. Use of CALPUFF for this application

NJDEP determined that AERMOD, the EPA model that is typically used, was not appropriate for this application, and that CALPUFF was the appropriate model here. First, the Portland Plant is located in an area of significant terrain features. The complex wind fields generated by these terrain features have an important influence on the maximum concentrations predicted by an air quality model. *See* "The Existence of Complex Wind Fields in the Region Surrounding the Portland Power Plant Site and the Use of CALPUFF," dated February 25, 2010, Exh. 11. Under Section 7.2.8 of the regulations, CALPUFF may be used in areas of complex winds. Specifically, EPA describes CALPUFF as "a multi-layer, multi-species non-steady state puff dispersion modeling system that simulates the effects of time- and space-varying meteorological conditions on pollutant transport, ..." Thus, CALPUFF has spatially varying wind fields and the ability to account for a previous hour's emissions. In contrast, AERMOD, is a "steady-state" plume dispersion model with no directional variation in its wind fields and no memory of the previous hour's emissions. *See* Appendix A to Appendix W of Part 51, A.1 & A.4. The existence of complex winds in the area makes CALPUFF the more suitable model for this application.

In addition, under EPA's regulations, alternative models are acceptable for use if certain circumstances are met. *See* Appendix W to Part 51, Guideline on Air Quality Models, Section 3.2. For example, under Section 3.2.2(b)(2), one model can be used over another "if a statistical performance evaluation has been conducted using measured air quality data and the results of that evaluation indicate the alternative model performs better for the given application than a comparable model in Appendix A." Here, NJDEP completed a near-field validation study of the CALPUFF air dispersion model that evaluated its performance as compared to that of AERMOD. *See* "Validation of CALPUFF in the Near-Field," February 25, 2010. (Exh. 12) NJDEP found that "[t]his model validation establishes that use of CALPUFF for [evaluating the impact of Portland's emissions in this study area] is appropriate, produces predictions of greater accuracy than AERMOD." *Id; see* Appendix W, Part 51, Section 3.2.2(b). Because NJDEP found that CALPUFF more accurately predicted the impact of Portland's emissions on New Jersey compared to AERMOD, NJDEP appropriately used CALPUFF to model Portland's impact on New Jersey.

VI. New Jersey's Efforts

New Jersey is regulating its air pollution sources to meet its attainment obligations and the Act's interstate transport provisions. New Jersey's efforts to meet and maintain the NAAQS, however, are impeded by the proximity and magnitude of Portland's emissions.

New Jersey recently finalized regulations designed to control the SO_2 and particle emissions, as well as NO_x, from all of the coal-fired power plants in New Jersey. The regulations require all operating coal-fired boilers to implement Reasonably Available Control Technology ("RACT") by at least December 15, 2013. *See Control and Prohibition of Air Pollution by Volatile Organic Compounds and Oxides of Nitrogen,* 41 N.J.R. 1752(a) (April 20, 2009). On April 23, 2010, EPA proposed to approve New Jersey's request to incorporate these regulations into its SIP. 75 Fed. Reg. 21,197.

There are ten coal-fired boilers serving electricity generating units (EGUs) at seven facilities in New Jersey. This rule implements a multi-pollutant control strategy to reduce allowable particles, SO_2 and NO_x emissions by lowering the maximum allowable emission rates. *See, e.g., N.J.A.C.* 7:27-4.2, (setting forth maximum allowable emission rates of 0.0300 lb/MMBtu for PM). These regulations also apply to other sources of air pollution, such as asphalt pavement production plants, glass manufacturing facilities, industrial/commercial/institutional boilers, municipal solid waste incinerators, and sewage sludge incinerators, further demonstrating New Jersey's efforts to control air pollution from in-state sources.

New Jersey also has filed an action against the current and prior owners of the Portland Plant in the United States District Court for the Eastern District of Pennsylvania pursuant to Section 304(a) of the Act, 42 U.S.C. § 7604(a), for violations of the Prevention of Significant Deterioration provisions of the Act. 42 U.S.C. §§ 7470-7479. As alleged in New Jersey's complaint, "modifications" from the 1980's through at least 2005 were undertaken at the plant

without required permits or the installation of "Best Available Control Technology." *See, e.g.*, 42 U.S.C. § 7475. These modifications increased the emissions from the Portland Plant. This action addresses distinct violations stemming from unlawful emissions at Portland, but similarly seeks to abate these emissions.

VII. Requested Remedy: EPA Must Require the Installation of Appropriate Air Pollution Control Technology at the Portland Plant to Remedy the Section 126 Violations

Because Portland's emissions cause NAAQS violations in New Jersey, under Section 126 of the Act, New Jersey petitions EPA to directly regulate this offending source to abate the significant contribution to nonattainment and the interference with New Jersey's maintenance of the SO_2 and 24-hour $PM_{2.5}$ NAAQS. EPA can accomplish its statutorily required duty by requiring the installation of appropriate air pollution control technology at the Portland Plant, which currently lacks any air pollution control technology to control SO_2 emissions such as scrubbers, and lacks modern air pollution control technology to control $PM_{2.5}$ emissions, such as baghouses.

Such control technology must be installed with a timetable specified by EPA for Portland no later than three years. *See* CAA Section 126(c), 42 U.S.C. § 7426(c); *see also* 40 C.F.R. §§ 50.4, -.5 and -.7. Alternatively, EPA should impose emission limits no less stringent than New Jersey's RACT rules.

If EPA chooses additional means to abate the unlawful transport of air pollution from other sources in Pennsylvania that may also unlawfully significantly contribute to nonattainment and/or interfere with maintenance of attainment in New Jersey, any collaborative contribution approach to unlawful interstate emissions must safeguard against "hot spots" and ensure that the Portland Plant no longer significantly contributes to nonattainment or interferes with attainment of the NAAQS. *Cf. North Carolina v. EPA, per curiam*, 531 F.3d 896, 907-08 (D.C. Cir. 2008) (finding that EPA has a duty under Section 110(a)(2)(D)(i)(I) to "achieve something measurable toward the goal of prohibiting sources" from contributing to nonattainment or interfering with maintenance in order to meet the requirements of Section 110(a)(2)(D)(i)(I), and the cap and trade program here, with the purchasing of allowances, could lead to *no* reduction in a source's significant contribution). EPA may not choose to remedy the Section 126 violations here by allowing the Portland Plant to purchase allowances from sources in other parts of Pennsylvania farther away from New Jersey, if Portland's emissions would continue to unlawfully impact New Jersey. *See also North Carolina*, 531 F.3d at 908 (emphasizing that it has never "passed on the lawfulness of the NO_x SIP Call's trading program"). Therefore, only through the installation of controls and imposition of more stringent allowable emission rates *at Portland* can the violations of Sections 110 and 126 of the Act be remedied. NJDEP is also willing to discuss remedial measures with EPA.

VIII. CONCLUSION

The Act authorizes a state to petition EPA to regulate any source that significantly contributes to nonattainment or interferes with maintenance of NAAQS in any other state. 42 U.S.C. § 7426(b). Once EPA finds that a source violates the Act, it must require abatement from that source within three months, or no later than three years, of such a finding. *Id.*, § 7426(c). NJDEP's modeling, which was based on a thorough analysis using several different data sets, demonstrates that emissions from the Portland Plant alone significantly contribute to nonattainment and/or interfere with maintenance of the 24-hour and 3-hour SO_2 NAAQS in Knowlton Township, Warren County, New Jersey. NJDEP also found violations of the 24-hour $PM_{2.5}$ NAAQS in Knowlton Township. Therefore, and for all of reasons presented herein, New Jersey respectfully requests that EPA grant this Petition and directly regulate the Portland Plant to remedy the Clean Air Act violations and to address the public health and welfare concerns. New Jersey specifically requests the installation of appropriate air pollution controls and/or the imposition of more stringent emission rates at Portland.

Dated:
5/11/2010

Respectfully submitted,

BOB MARTIN
Commissioner, New Jersey
Department of Environmental Protection